

# EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

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## MULTIPLE EMPLOYER PLANS: DETERMINATION PROCEDURES

Multiple employer determination letter applications present special procedural challenges to the Employee Plans determination specialist and to the EP determinations organization. The purpose of this bulletin is to address some of these special issues especially in light of the centralization of the determination processing function and the centralization of the EP determinations quality assurance function. This bulletin does **not** address the determination application processing of multiemployer plans under IRC 413(b) (collectively bargained plans). The changes to this bulletin are underlined below.

### **I. Background**

- **Definition**

A multiple employer plan is a plan maintained by two or more employers who are not related under IRC 414(b) (controlled groups), 414(c) (trades or businesses under common control), or 414(m) (affiliated service groups). Employers related under sections 414(b), (c), or (m) of the Code are treated as a single employer for determining the number of employers maintaining a multiple employer plan. Multiple employer plans are governed by the rules in IRC 413(c). The rules of IRC 413(c) do not apply to collectively bargained multiemployer plans described in Reg. 1.413-1(a).

- **Distinctive Qualification Requirements/Characteristics**

- A. **Single Plan.** A multiple employer plan is a single plan as defined in Reg. 1.414(l)-1(b)(1). (See Reg. 1.413-2(a)(2) and then Reg. 1.413-1(a)(2).) A single plan is a plan under which all of the assets, on an ongoing basis, "are available to pay the benefits to employees who are covered by the plan and their beneficiaries".
- B. **Single Employer.** Under a multiple employer plan some qualification requirements are applied as if all employees of each employer are employed by a single employer, e.g. sections 410(a), eligibility to participate; 411, vesting; and 401(a), exclusive benefit requirement. For instance, service with one employer is treated as service with the other employers for determining if an employee is eligible to participate.

- C. **Separate Employers.** Under a multiple employer plan other qualification requirements are applied to each participating employer as if that employer maintained a separate plan, e.g. sections 410(b), coverage; 401(a)(4), nondiscrimination; and 416, top-heavy. For example, the coverage requirements of IRC 410(b) are applied to a multiple employer plan on an employer-by-employer basis. Each unrelated employer performs separate coverage testing with respect to its portion of the plan. The employers do not have to use the same testing rules. (See Reg. 1.413-2(a)(3)(ii) and Reg. 1.410(b)-7(c)(4)(i)(A) & (c)(4)(ii).)

Each employer's portion of the multiple employer plan must be taken into account, along with any other plans of that employer, in applying the top-heavy requirements of section 416 and the limitations of section 415. Additionally, with respect to a participant of an employer maintaining a multiple employer plan described in section 413(c), benefits or contributions and compensation received from all of the employers maintaining the plan must be taken into account when applying the section 415 limits (Reg. 1.415-1(e)).

- Special Disqualification Requirement

Under the section 413 regulations the failure of one participating employer or the failure of the plan itself to satisfy an applicable qualification requirement will result in disqualification of the multiple employer plan for all participating employers (for all "employers maintaining the plan"). Reg. 1.413-2(a)(3)(iv). For example, the failure of any participating employer to satisfy the top-heavy rules disqualifies the entire multiple employer plan for all of the employers maintaining the plan. (See Reg. 1.416-1, Q&A G-2.)

## **II. Processing Procedures**

- Traditional Determination Application Procedures

Multiple employer plans file one complete determination application (Form 5300) on behalf of the plan in the name of one employer (sometimes referred to as the "lead" employer) and a separate Form 5300 completed through Line 8 for each other employer maintaining the plan.

Under the revised determination letter application procedures described in Announcement 2001-77, each employer may now request a determination letter that considers the form of the plan only or both the form of the plan and compliance with the requirements of sections 401(a)(4), 401(a)(26), and/or 410(b).

Therefore, each separate employer in a multiple employer plan may elect to submit (a) coverage data (Line 13 of Form 5300 (Rev. 9/2001)) for the section 410(b) ratio percentage test; and/or (b) the information regarding participation, coverage, and nondiscrimination requirements on Schedule Q. The individual determination letter for

each separate employer may be relied upon to the extent of the relevant information and demonstrations submitted for each separate employer and retained by the employer.

See Section 10 of Rev. Proc. 2004-6 and Announcement 2001-77.

- "Simplification" Option

Announcement 2001-77 also provides a streamlined and simplified choice for multiple employer plans under which a letter is issued for the form of the plan only and under which an application is filed on behalf of one employer (out of all of the employers maintaining the multiple employer plan). All employers maintaining a multiple employer plan filed under this option can rely on a favorable determination letter **issued for the plan** except with respect to the requirements of sections 401(a)(4), 401(a)(26), 401(l), 410(b), 414(s), and, if the employer maintains or has ever maintained another plan, sections 415 and 416. See Section III of Announcement 2001-77 for details under this option.

- Additional Application Procedures

A. **Powers of Attorney--Form 2848.** Each separate employer maintaining the multiple employer plan submits its own individual Form 2848. The Instructions to Line 1 of Form 2848, Taxpayer Information, require the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the plan sponsor. The separate employers participating in a multiple employer plan are not related by ownership or a substantial service relationship. (A controlled group of employers is treated as one separate employer under a multiple employer plan.) Therefore, each separate employer is the plan sponsor as to its own adoption of the multiple employer plan and is responsible for executing its own Form 2848. Because these employers are not related, they do not have the authority to execute Forms 2848 for each other.

Nevertheless, EP specialist assigned multiple employer cases may notice that in some cases, only the "lead plan" application includes a Form 2848. As noted in section IB of this QAB, some qualification requirements are applied as if all employees of each employer are employed by a single employer. Hence, in circumstances that involve several adopting employers, where the qualification requirements are treated as a single employer, only the "lead" employer plan individual Form 2848 will be required. For example, if a multiple employer plan (i.e. 50 adopters) received a favorable determination letter for GUST, but subsequently is amended to change the minimum age requirement from "21" to "18", and submits a Form 5300 application to the Service for a determination letter, only the "lead" employer plan individual Form 2848 would be required **not** the remaining 49 adopting employer plans individual Forms 2848.

- B. Who Signs the Application?** The Instructions to Form 5300 (Rev. 9/2001) provide that "The application must be signed by the employer, plan administrator or authorized representative".

If one representative signs the Forms 5300 for multiple employers, each separate employer must execute its own Form 2848 as to that one representative. If a plan administrator signs the Forms 5300 for multiple employers, the employee plans specialist should obtain a copy of the authorizing document, i.e. the written instrument specifically empowering the plan administrator to sign the determination letter application forms for the respective employers. (See IRC 414(g) for definition of plan administrator.)

- C. EDS Establishment.** Since October 2000, the Service has established each separate employer for multiple employer plans on EDS as a separate entity module with its own case number and file folder number. The current EDS entity screen data on each employer indicates "M" for multiple employer plans under "Entity Type" (from Line 7 of Form 5300).

While the "lead" employer for a multiple employer plan was previously assigned a plan number of 333, this is no longer necessarily true. Currently lead employer plan numbers will only be 333 if designated as such on Form 5300 by the lead employer.

- D. TEQMS Selection.** Only the "lead" employer plan is subject to TEQMS selection. If the "lead" employer plan is selected for TEQMS review, each adopting employer plan must be sent to Quality Assurance. However, if the "lead" employer plan is **not** selected for TEQMS review, but one or more of the adopting employer plans are selected for TEQMS review, contact the TEQMS analyst to remove the case from the TEQMS selection.

- E. Mandatory Selection.** If the "lead" employer plan is selected for mandatory review, or one of the adopting employers of the multiple employer plans are selected for review, the entire multiple employer plan must be sent to Quality Assurance.

- F. Determination Letter Design and Generation.** Each separate employer receives its own determination letter which is individually designed or created on its own EDS module. This allows the Service to retain a record of the determination letter for each employer for future retrieval if necessary. The caveats used for each employer may differ depending on various circumstances, e.g. receiving additional information to change the scope of reliance, differing plan and amendment execution dates.

The 835 determination letter does not explicitly indicate that the employer is participating in a multiple employer plan. *To facilitate this identification, we recommend use of the following new caveat (EDS caveat #98) on all multiple employer determination letters:*

*"Based on the information you have supplied, you are a participating employer in a multiple employer plan under section 413(c) of the Code."*

- F. **Separate Case Files.** A separate case file should be maintained for each employer in order to clearly document and account for each Form 5300, each Form 2848, the various levels of reliance among the employers, and the differing determination letters.

### **III. Quality Assurance Staff Review of Multiple Employer Plans**

Multiple employer plans present a logistical challenge for a centralized quality assurance function. The "lead" multiple employer plan with numerous participating employers may be selected for review by the TEQMS program upon case closing. Some multiple employer groups may be subject to mandatory review, e.g. because of interested party comments. The resulting shipment of cases is time consuming and cumbersome. When Quality Assurance finds it necessary to issue Reviewers' Memoranda, the problems increase. Generating and printing corrected letters is very time consuming.

Agents who are assigned multiple employer plans **may, but are not required,** to contact the Manager, EP Determinations Quality Assurance **before** beginning plan review.

Discussions at this point on the facts and circumstances of the specific multiple employer plan will focus on tailoring an individualized "review strategy" for the multiple employer plan. This review strategy may involve in-depth pre-review of the case files with and/or by a Quality Assurance reviewer either on-site or off-site. This pre-review could involve agreement as to which items and amendments will be requested in the agent's 1196 letter to the plan sponsor/POA. The review strategy could also involve a plan for continued monitoring of the case's progress and the approach to handling the end-stage TEQMS or mandatory review evaluations.

This quality assurance approach partially unifies the working of the case and its review. The purpose is to minimize the number of contacts with the group of employers and POA(s) and to streamline the review process through front-end participation by the Quality Assurance Staff.